

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,752

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying his application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

FINDINGS OF FACT

The petitioner is a fifty-one-year-old man with a history of psychiatric and substance abuse problems (the latter, apparently, being in remission). He last worked in 1993 at a gas station owned by a friend, but even that job reportedly (see *infra*) proved too stressful for the petitioner to maintain.

The medical evidence shows that the petitioner has received ongoing therapy since at least February, 1996, from the mental health service in his community. He was hospitalized on an emergency basis for almost two weeks in late August-early September, 1996, after a period of decompensation.

The record includes the following report, dated January 22, 1997, from his treating psychiatrist at the community mental health agency:

I was recently notified that [petitioner's] application for Social Security Disability benefits was denied, and I am writing to express my disagreement with this decision. I have treated [petitioner] since July of 1992 for recurrent Major Depressive Disorder with psychotic features. He has been maintained on a combination of antidepressant and antipsychotic medication throughout this period, and has been able to achieve intervals in which his mental state is quite fragile and he has a very limited ability to tolerate normal day-to-day stress. I have seen several times over the past several years when he attempted to return to work, but soon afterward developed an episode of psychotic depression precipitated by work stress. While he has a strong work ethic and wish to be productive, I do not believe that it is safe for him to return to regular employment because of his strong vulnerability to episodes of psychotic depression. I ask that you will reconsider the decision regarding denial of Social Security Disability benefits.

The above report was followed up on February 3, 1997 by the following assessment from the petitioner's primary psychologist at that agency:

In regards to [petitioner's] application for SSI and Medicaid benefits, it is my opinion that his combined difficulties of schizophrenia, anxiety, depression and alcohol dependence necessitates his receiving these benefits.

I have presently been [petitioner's] clinician for several months. Prior to that I worked with him for a few years in the early 1990's. During the interim I supervised his clinician. For quite some time I had been hopeful that [petitioner] could get by without these benefits. However, I have concluded over time that the symptoms [petitioner] contends with so seriously limit his tolerance for stress and pressure, that he cannot sustainably cope with the stressors and pressures of competitive employment. A striking example is that because of recurrent breakdowns, [petitioner] was unable to continue his part time job pumping gas at a service station, even though he was working for friends.

Furthermore, in regards to [petitioner's] Medicaid application, it should be considered that his psychiatric disorders require ongoing treatment with medication, supportive counseling, case management, and periodic hospitalization. I cannot foresee any scenario where he can afford this treatment without this benefit.

On February 4, 1997, the petitioner's counselor at the Vermont Division of Vocational Rehabilitation submitted the following report in the petitioner's behalf:

I am writing on behalf of [petitioner]. This letter is meant to verify that [petitioner] is currently receiving services from the Division of Vocational Rehabilitation. We are assisting [petitioner] with vocational counseling and guidance, and job placement services. At this time, [petitioner] is actively seeking employment.

[Petitioner] does have on-going medical needs which must be met in order for him to pursue and obtain meaningful and lasting employment. I hope that you will reconsider [petitioner's] eligibility for Medicaid Services.

Based on the above it is found that the petitioner's condition is chronic and long-standing. Although there appears to be some hope that, with treatment, his condition will improve, the evidence is clear that for the past several years the petitioner has been unable to engage in any substantial gainful activity on a regular and sustained basis.

ORDER

The Department's decision is reversed.

REASONS

Medicaid Manual Section M 211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national

economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

As noted above, the medical evidence in this matter is clear and uncontroverted that for at least the past year the petitioner has been unable, due to an ongoing psychotic depressive disorder, to engage in any substantial gainful activity. Thus, the above definition of disability is met, and the Department's decision is reversed.

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